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SUPREME COURT, U. S.

Supreme Court of the United States

OCTOBER TERM, 1963

No. ~~111~~ 52

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
EDUCATIONAL FUND, INC.,

Plaintiffs-Appellants,

BENJAMIN E. SMITH and BRUCE WALTZER,

Intervenors-Appellants,

against

JAMES H. PFISTER, individually and as Chairman of the Joint
Legislative Committee on Un-American Activities of the Lou-
isiana Legislature, RUSSELL R. WILLIE, individually and as
Major of the Louisiana State Police Department, JIMMIE H.
DAVIS, individually and as Governor of the State of Louisiana,
JACK P. F. GREMILLION, individually and as Attorney General
of the State of Louisiana, COLONEL THOMAS D. BURBANK, in-
dividually and as Commanding Officer of the Division of Loui-
siana State Police, and JIM GARRISON, individually and as
District Attorney for the Parish of Orleans, State of Louisiana,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF LOUISIANA, NEW ORLEANS DIVISION

**MOTION FOR LEAVE TO FILE BRIEF AND BRIEF
OF THE AMERICAN CIVIL LIBERTIES UNION
AND LOUISIANA CIVIL LIBERTIES UNION,
AMICI CURIAE**

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April 1964

Supreme Court of the United States

OCTOBER TERM, 1963

No. 941

JAMES A. DOMBROWSKI and SOUTHERN CONFERENCE
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MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE*

The American Civil Liberties Union and its affiliate, the Louisiana Civil Liberties Union, respectfully move for leave to file brief as *amici curiae* in support of appellants' Statement of Jurisdiction. The attorneys for appellants have consented, as has Hon. Jim Garrison, District Attorney for the Parish of Orleans. Hon. Jack P. F. Gremillion, Attor-

ney General of Louisiana has refused consent. Jack Rogers, Esq., attorney for appellee Pfister, did not reply. The consents and refusal have been filed with the Clerk of the Court.

Though the American Civil Liberties Union frequently appears *amicus curiae* in this Court, it does so very infrequently prior to the consideration of the jurisdictional statement or petition for certiorari. We believe, however, that our motion for leave to appear at this stage of the case at bar is warranted by its special importance. Our reasons are set forth in the text of the brief which follows.

Respectfully submitted,

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
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BRIEF AMICI CURIAE OF AMERICAN CIVIL LIBERTIES UNION AND LOUISIANA CIVIL LIBERTIES UNION

The American Civil Liberties Union and the Louisiana Civil Liberties Union file this brief in support of the appellant's jurisdictional statement because this case raises basic questions about the enforcement of the Bill of Rights in our federal system which urgently need authoritative clarification by this Court.

The cases arise out of the turbulence of the movement to secure political liberty for American Negroes. Concurrently, it draws into issue the validity of state statutes which purport to regulate subversive activities and communism. Decisions validating politically repressive legislation against one nationally unpopular minority¹ offer to local governments a continuing incentive to achieve, by indirection, denial of the federal rights of a regionally unpopular minority.² By capitalizing on the legitimated aversion to communism, the appellees hope to create another obstacle in the way of Negro freedom.³ So long as it is lawful to repress communism but unlawful to repress Negro equalitarianism, this Court has the obligation to lay down clear rules preventing the destruction of Negro rights on the pretext that those who claim them or defend them are subversive.

In addition, two of the appellants in this case, Messrs. Smith and Waltzer, are lawyers who have been indicted under these statutes (Louisiana Revised Statutes, Title 14, Sec. 360) solely because they have not shirked their duty as members of the bar to represent clients who are unpopular in their community.⁴ Not coincidentally, Mr. Smith is Chairman and Mr. Waltzer a member of the Legal Panel of the Louisiana Civil Liberties Union.

¹ See, e.g., *Communist Party v. Subversive Activities Control Board*, 367 U. S. 1.

² See Lusky, *Racial Discrimination and the Federal Law: A Problem in Nullification*, 63 Col. L. Rev. 1163, 1173-74.

³ The type of statute involved here is not peculiar to Louisiana. See, e.g., *Stanford v. Texas*, No. 869, petition for certiorari filed February 26, 1964.

⁴ Mr. Smith has been indicted for being a member and Treasurer of the Southern Conference Educational Fund, and a member of the National Lawyers Guild. Mr. Waltzer has been indicted for being a member of the National Lawyers Guild.

That the bar at large is not satisfactorily discharging its duty to represent the unpopular client has frequently been recorded.⁵ To allow two lawyers to be subjected to criminal prosecution because they have represented individuals engaged in unpopular causes is to penalize them for doing their professional duty and inferentially to applaud the lassitude of their colleagues at the bar. Such attacks on lawyers, if successful, can render Negro rights illusory in large sections of the country. A legal right has little meaning if no lawyer can be found to defend it.

For these reasons, most briefly stated, we urge the Court to note probable jurisdiction. The full breadth of the issues can be explored only on plenary consideration of the case.

Respectfully submitted,

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⁵ See, for example, Rostow, *The Lawyer and His Client*, ABA Journal, January 1962, February 1962; Downs and Goldman, *The Obligation of Lawyers to Represent Unpopular Defendants*, 9 Howard Law Journal 49 (1963); Symposium, *The Right to Counsel and the "Unpopular Cause"*, 20 Univ. of Pitt. Law Rev. 725 (1959); Cheatham, *A Lawyer When Needed* (Columbia Univ. 1963); Sacks, *Defending the Unpopular Client*, National Council on Legal Clinics (Amer. Bar Center, 1961).